

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
VARIANCE STAFF REPORT (#FZV-21-08)
CESAR AND ALEXANDRA AVILA
DECEMBER 21, 2021

I. GENERAL INFORMATION

A. Project Description

A report to the Flathead County Board of Adjustment regarding a request from Cesar and Alexandra Avila for a variance to Section 3.40.040(2)(A) and Section 3.40.040(2)(C) of the Flathead County Zoning Regulations (FCZR). The variance request would apply to property located at 881 Trail Creek Road near Polebridge, MT. The property is located within the North Fork Zoning District and is zoned 'North Fork'. The applicant is requesting a variance to the setback requirements of the North Fork zoning for a Guest Cabin.

B. Application Personnel

Owner/Applicant

Cesar and Alexandra Avila
320 Heikens Road
Nashua, MT 59248

C. Process Overview

1. Land Use Advisory Committee/Council

This property is not located within the jurisdiction of the North Fork Land Use Advisory Committee. The NFLUAC did not meet to address this request.

2. Board of Adjustment

The Flathead County Board of Adjustment will conduct a public hearing on the proposed zoning variance on January 4, 2022, at 6:00 P.M. in the Second Floor Conference Room of the South Campus Building located at 40 11th Street West in Kalispell, MT. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, located on the second floor of the South Campus Building.

II. PROPERTY CHARACTERISTICS

A. Property Location and Size

The subject property is located at 881 Trail Creek Road near Polebridge, MT and totals approximately 2.36 acres (see Figure 1 below). The property can be legally described as Lot 2A in Section 28, Township 37 North, Range 22 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property (outlined in blue)



B. Existing Land Use(s) and Zoning

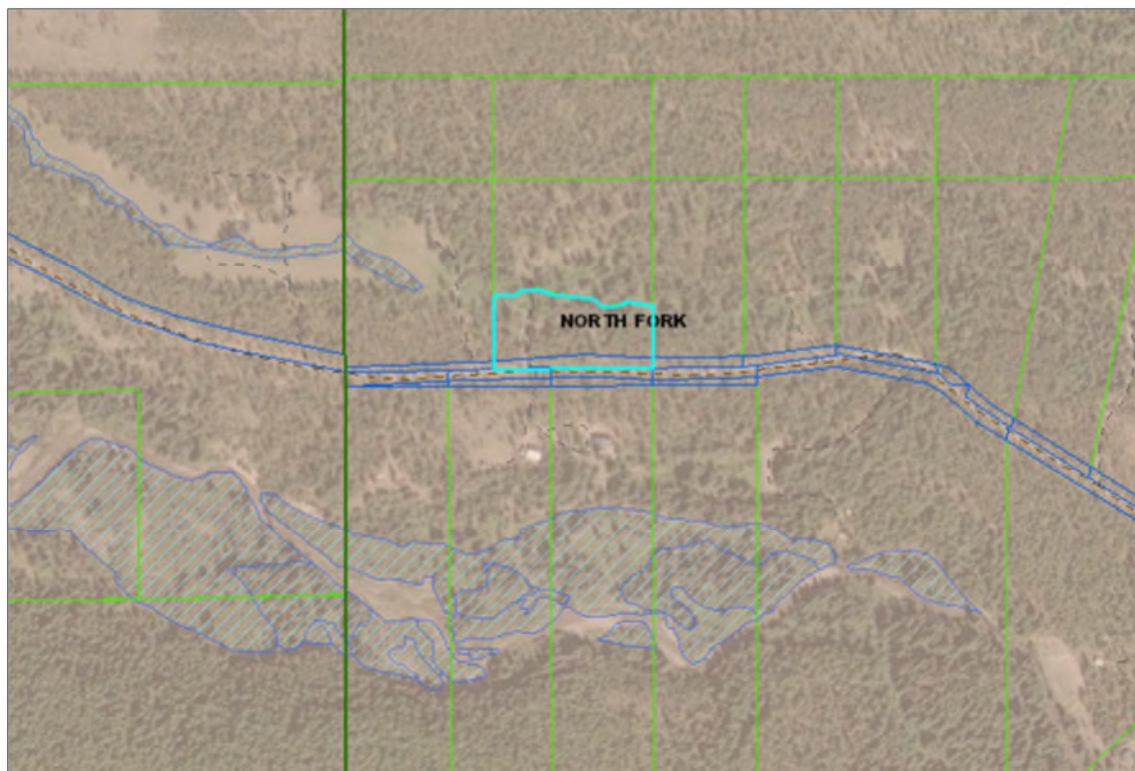
The property is located within the North Fork Zoning District and is zoned 'North Fork'. The property is currently developed with a single-family dwelling.

The North Fork zoning classification is defined in Section 3.40.010 as, *'The North Fork Flathead River Valley Land Use Plan adopted in 1987 and updated in 1992 begins by stating, "Those who live or own land in the North Fork of the Flathead River face the prospect of making difficult decisions about the future of this beautiful area." The final statement of the Plan concludes "it is necessary to put into place a system which will protect the rights of all landowners, resident and non-resident, and also preserve those unique values so important to the North Fork: clean air, pure water, open space, freedom from noise and light pollution." The following standards are intended to bridge those difficult decisions and give guidance to the area we call "the North Fork".'*

C. Adjacent Land Use(s) and Zoning

The adjacent surrounding properties are similarly zoned North Fork (see Figure 2 below). The general character of the area is very low density residential and undeveloped tract land.

Figure 2: Zoning surrounding the subject property (outlined in blue)



D. Summary of Request

The applicant is requesting a variance to the setback requirements for a guest house. The bulk and dimensional requirements within the North Fork zone require a 100-foot front yard setback for new buildings. Additionally, a 150-foot setback is required from the high-water line of rivers, streams, and lakes (over 20 acres in size). The property is bordered to the north by a seasonal creek called Ketchikan Creek (See figure 4 below). This creek essentially serves as the northern property boundary. Note that the GIS imagery is not completely accurate with the location of the actual stream. Because of the setback requirement for the road (100ft) and the creek (150ft), the property is simply not wide enough to meet these requirements. This property is roughly 250 feet wide at the widest point, so constructing a Guest Cabin would result in a setback encroachment. Because a Guest Cabin is a permitted use in the North Fork Zone, Section 3.40.040(3) results in the automatic approval of this zoning variance request. Section 3.04.040(3) states, “Any existing lot or tract which cannot meet these setbacks because of size or topographic limitations will be given a variance”.

Based on the site plan (See figure 3 below), the new Guest Cabin will be located on the eastern portion of the property. The Guest Cabin will encroach roughly 2 feet into the front 100-foot setback, and roughly 120’ into the stream setback. The Guest Cabin will be relatively small, measuring 18’x24’ with a 5’ deck.

Figure 3: Proposed site plan

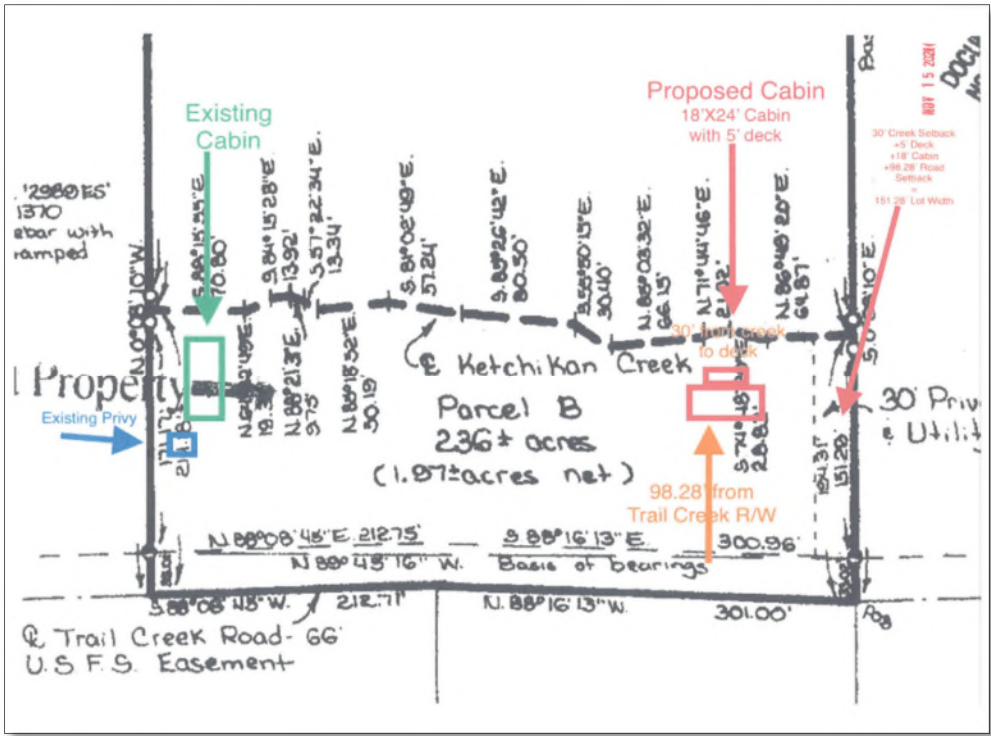


Figure 4: Ketchikan Creek (Approximate proposed Guest Cabin location indicated by orange star)



III. COMMENTS

A. Agency Comments

1. Agency referrals were sent to the following agencies on December 3, 2021:
 - Flathead City-County Environmental Health Department
 - Conservation Districts Bureau – Department of Natural Resources and Conservation
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:
 - Flathead City-County Health Department
 - Comment: “This office has reviewed the information provided and submits the following comments:
 1. There are sanitary restrictions on this parcel that allow for only one single family dwelling.
 2. These sanitary restrictions can be found in the COSA E.S.#15-92-S136-544 (Marquardt COS Subdivision.)
 3. A COSA rewrite through DEQ would need to be submitted and approved in order to remove these restrictions.”

B. Public Comments

1. Notification was mailed to property owners within 150 feet of the subject property on December 15, 2021, pursuant to Section 2.05.030(2) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application will be published in the December 19, 2021, edition of the Daily Interlake.
2. Public Comments Received

As of the date of the completion of this staff report, three (3) written public comments have been received regarding the requested variance. The comments were in opposition to the variance, stating that if a variance is approved, a precedence would be set regarding variance approval in the North Fork. More specifically, concern was voiced regarding the question of hardship. The comments state that this property was purchased by the Avila’s in 2013, and that they were aware of the limited usable space at that time. Other concerns include the use of the property as short-term rental, the fact that the Avila’s are in the process of selling the property, sanitation concerns, and proximity to Ketchikan Creek. The variance language set forth in the North Fork Zoning Section specifically states that any existing lot which cannot meet the setback requirements because of size or topographic limitations will be given a variance (Section 3.04.040(3)). It does not exclude property owners who allegedly knew about the limitations at the time of purchase. Short-term rental usage falls under the umbrella of “rental cabins” in the North Fork Zoning language and is therefore an allowable use. The current owners choosing the put the property up for sale does not impact the zoning variance request from a Planning and Zoning perspective. Sanitation concerns are addressed by the Flathead City-County Environmental Health Department. They provided comment on this request which is included above. The Department of Natural Resources and Conservation was notified and encouraged to submit comment on this request, but no comment was received. The DNRC would be the agency with standards regarding Ketchikan Creek.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Section 2.05.030 of the FCZR, what follows are review criteria for consideration of a variance request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the FCZR states, *‘No variance shall be granted unless the Board (of Adjustment) finds that all of the following conditions are met or found to be not pertinent to the particular case.’*

A. Strict compliance with the provision of these regulations will:

1. Limit the reasonable use of the property

The application states, *“Based on the rectangular shape of the property, strict compliance with the regulation would render most of the property unusable for living space”*.

The explanation for this item appears to be accurate. The setbacks set forth in the North Fork Zoning Regulations would mean that this property could not utilize uses that are allowable in the North Fork Zone.

Finding #1: Strict compliance with the regulations could limit the reasonable use of the property because a Guest Cabin, which is a permitted use, could not be built anywhere on the property without facing setback restrictions.

2. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district:

The application states, *“The applicants are unaware of similar situated properties in the North Fork Valley. Parcels are mostly in 20-acre blocks, many larger, with only a minimal amount of properties broken down into smaller parcels. As such, the applicant’s property is uniquely situated with two boundaries with limit the ability to build a new structure.”*

Surrounding properties are similarly zoned North Fork. Some of the surrounding properties are developed with cabin style homes, but much of the surrounding land is open and undeveloped. The proposed Guest Cabin would have a total footprint of roughly 450 square feet. The definition for Guest Cabin regarding the North Fork Zone is as follows, *“A detached structure being an accessory to a single-family dwelling, which may or may not have cooking facilities and/or bathroom facilities. If a guest cabin is rented, it shall be deemed as a rental cabin and subject to density requirements placed upon rental cabins in this zoning district”*. The proposed Guest Cabin appears to meet this definition.

Finding #2: Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties similarly situated in the same district because each property within the North Fork zone is permitted to have a Guest Cabin on their property, and the subject property is the smallest property that has frontage on Trail Creek Road.

B. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.

The application states, *“The hardship is, as previously stated, due to the property being in a rectangular shape which limits the amount of area which is usable for a new build that isn’t restricted by boundaries”*.

Because of the extreme setback requirements of North Fork Zoning in comparison to other zones, this property is entirely limited for otherwise allowable uses base on the size and location of the property. There is a creek on the north boundary line, and a public road on the south boundary line. These factors serve to eliminate the building envelope on the subject property. The alleged hardship appears to be the result of lot shape, topography and other circumstances over which the applicant has no control.

Finding #3: The hardship appears to be attributable to the lot size, shape, topography, and other circumstances over which the applicant has no control because the lot is not a typical size when considering the extreme setback requirements of the North Fork Zone.

C. The hardship is peculiar to the property.

The application states, *“The hardship is unusual because the shape of the property and the amount of acreage, which is not common in the North Fork Valley”*.

Properties in the area are generally larger than the subject property. There are a few properties of similar size to the northeast of the subject property, but because those properties do not have public road frontage, the setback requirements are less severe for them.

Finding #4: The alleged hardship appears to be peculiar to the subject property because despite some of the similar sized properties in the area, the subject property is situated in a location that requires a more severe setback requirement than the other properties of this size, and therefore greatly limits the amount of buildable space.

D. The hardship was not created by the applicant.

The application states, *“The hardship is based on the topography, size and shape of the property, not one created by the applicant.”* As previously stated, the lot was created prior to the adoption of North Fork Zoning. This hardship is due to the fact that the lot is small by North Fork standards, and because the lot fronts a public road. Additionally, the extreme rear setback is due to a seasonal creek that acts as the rear property boundary.

Finding #5: The hardship was not created by the applicant because the lot was platted prior to zoning and the property is located on a public road with a seasonal creek flowing through the rear of the property.

E. The hardship is not economic (when a reasonable or viable alternative exists).

The application states, *“The hardship is not for economic reasons. The variance is requested because there is currently not enough room to build as it will encroach the existing North Fork Zoning variances written in 3.04.040(2)(A) and 3.04.040(2)(B).”*

As far as building a Guest Cabin, which is a permitted use for the North Fork Zone, no alternatives exist. The Guest Cabin could not be placed anywhere on the property while meeting the required setbacks. The applicant quoted Section 3.04.040(2)(B), but the correct section is 3.04.040(2)(C). The applicant quoted the required setback for properties on North Fork Road, but the property is not located along North Fork Road. The setback is 100 feet from the road because it is a public road that *isn't* North Fork Road.

Finding #6: The hardship does not appear to be economic because no reasonable or viable alternatives exist.

F. Granting the variance will not adversely affect the neighboring properties or the public.

The application states, *“Granting the variance will not impede the use of the neighbor’s property in any way. A structure will be minimally visible and will not obstruct any existing building’s views. Previously there was a barn on the property, prior to the current owners buying the property.”*

If the variance is granted, it is not expected to adversely affect the neighboring properties or the public. No agency comments were received that would indicate concerns regarding a reduced front yard setback. Additionally, the proposed structure is small in size, and will fit the character of the North Fork area.

Finding #7: Granting the variance request would not appear to adversely affect the neighboring properties or the public because no agency comments were received that would indicate concerns regarding the reduced setbacks, and the proposed structure will be small in size and will fit the character of the North Fork Area.

G. The variance requested is the minimum variance, which will alleviate the hardship.

The application states, *“The variance requested will be a reasonable accommodation for a new build with a minimal footprint on the property.”*

The request for a variance to the setbacks would result in the Guest House encroaching roughly 120’ into the stream setback requirement, and roughly 2’ into the public road setback requirement. Any way the Guest Cabin is situated will result in setback encroachments of some sort. For example, if the Guest House were to be moved 50’ further away from the stream, it would encroach another 50’ into the public road setback requirement.

Finding #8: The variance request appears to be the minimum variance which would alleviate the hardship because there is no location on the property that would allow for a lesser variance result.

H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

The application states, *“The variance will allow for maximum use of the property based on its existing limitations. No special privilege is being sought or granted. Current zoning states a variance will be granted. Similar properties, if any, should not be denied if a variance is requested. 3.04.040(3) and 3.04.040(6).”*

As stated before, there are no other properties of this size that are located on Trail Creek Road. Many of the lots in the area were created prior to zoning and are considered legal non-conforming. Based on a staff site visit, it is difficult to determine if surrounding properties have utilized the permitted use of having a Guest Cabin on their property. Much of the land is undeveloped tract land, with scattered residential dwellings on a few properties.

Finding #9: Granting the variance would not confer a special privilege that is denied to other similar properties in the district because similar properties in the surrounding area were developed prior to zoning adoption and would also fall under Section 3.40.040(3) of the Flathead County Zoning Regulations.

V. SUMMARY OF FINDINGS

1. Strict compliance with the regulations could limit the reasonable use of the property because a Guest Cabin, which is a permitted use, could not be built anywhere on the property without facing setback restrictions. Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties similarly situated in the same district because many of the surrounding properties contain garages similar in size to the proposed garage.
2. Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties similarly situated in the same district because each property within the North Fork zone is permitted to have a Guest Cabin on their property, and the subject property is the smallest property that has frontage on Trail Creek Road.
3. The hardship appears to be attributable to the lot size, shape, topography, and other circumstances over which the applicant has no control because the lot is not a typical size when considering the extreme setback requirements of the North Fork Zone.
4. The alleged hardship appears to be peculiar to the subject property because despite some of the similar sized properties in the area, the subject property is situated in a location that requires a

more severe setback requirement than the other properties of this size, and therefore greatly limits the amount of buildable space.

5. The hardship was not created by the applicant because the lot was platted prior to zoning and the property is located on a public road with a seasonal creek flowing through the rear of the property.
6. The hardship does not appear to be economic because no reasonable or viable alternatives exist.
7. Granting the variance request would not appear to adversely affect the neighboring properties or the public because no agency comments were received that would indicate concerns regarding the reduced setbacks, and the proposed structure will be small in size and will fit the character of the North Fork Area.
8. The variance request appears to be the minimum variance which would alleviate the hardship because there is no location on the property that would allow for a lesser variance result.
9. Granting the variance would not confer a special privilege that is denied to other similar properties in the district because similar properties in the surrounding area were developed prior to zoning adoption and would also fall under Section 3.40.040(3) of the Flathead County Zoning Regulations.

VI. CONCLUSION

Section 2.05.030(3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application. Upon review of this application, the request to allow for reduced setbacks is generally supported by the review criteria and the Findings of Fact listed above. Additionally, Section 3.04.040(3) states that a variance will be granted if any property cannot meet the required setbacks due to the size or topographic limitations.

Planner: LS